

**ORIGINAL**

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NEW YORK



---

Tabatha Foster	)	Complaint for a Civil Case
	)	For Copyright Infringement
Plaintiff,	)	
-against-	)	
New York Daily News and	)	
Thomas Tracy, Larry McShane,	)	
John Annese, Leonard Greene	)	
John Marzulli, et el, in their official	)	
and individual capacities as	)	
employees of Defendant Daily News	)	
Defendants,	)	

---

Case No. **22-cv-2934**

JURY DEMANDED

**DeArcy Hall, J.**

**Bloom, M.J.**

**COMPLAINT FOR COPYRIGHT INFRINGEMENT**

Plaintiff, Tabatha Foster, alleges as follows

**JURISDICTION AND VENUE**

1. This is a civil action seeking damages and injunctive relief for copyright infringement under Copyright Law of the United States (17 U.S.C. § 501, § 102, § 104 and § 106, *et seq.*, and 28

U.S.C. §§ 1331 and 1338 because it involves federal questions arising under the Copyright Act, as amended, 17 U.S.C. §§ 101 et seq.

2. Venue in this district is proper under 28 U.S.C. § 1391 (b) in that a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated;

3. Under New York's long-arm statute, N.Y. C.P.L.R. § 302(a)(3)(ii), the situs of the injury is the "location of the copyright holder."

4. Defendant, Daily News, address 4 New York Plaza, New York, 10004, Email: voicers@nydailynews.com , Phone 212-210-2100.
5. Defendant Thomas Tracy, employee of Daily News, New York
6. Defendant Larry McShane, employee of Daily News, New York
7. Defendant John Annese, employee of Daily News, New York
8. Defendant Leonard Greene, employee of Daily News, New York
9. Defendant John Marzulli, employee of Daily News, New York
10. Plaintiff, Tabatha Foster, address 795 Lexington Avenue, 2<sup>nd</sup> Floor, Brooklyn, New York 11221 Email tabathafostermusic@gmail.com Phone 347-526-3815
11. Plaintiff, Tabatha Foster, is the Registered Copyright Holder of images of herself that Defendants used to upload to the Daily News Official Website and Daily News YouTube Channels and other places unknown to Plaintiff for profit without her permission or consent. Plaintiffs Copyright photographs were used excessively to sexually exploit Plaintiff for profit and used in a derogatory manner with intent to annoy, alarm, harass and defame Plaintiff that has caused Plaintiff serious injuries of mental and emotional distress and damage to her reputation. Plaintiff suffered all injuries in New York City where she is the Copyright Registered owner of her Images. Defendants were all aware that they were not the owner of Plaintiff 's Copyright photographs. Plaintiff did contact Daily News via email on March 21, 2022 and filed a Copyright Infringement Claim with YouTube on March 20, 2022 to request the removal of her copyright photographs. Despite being aware of Plaintiff's Copyrights to her photographs, Defendants have continued to use and distribute Plaintiffs Copyright Photographs without her permission or authority to do so.

#### THE PARTIES

12. Plaintiff TABATHA FOSTER ("Plaintiff") is a resident of Brooklyn, New York

13. Plaintiff brings this action to stop Defendants from copying and distributing to themselves and others over the Internet unauthorized copies of Plaintiff's copyrighted photos of herself which also includes a Nonconsensual Porn photograph of Plaintiff. As a result of Defendant's actions, numerous online websites and strange Men on monetized YouTube channels unknown to Plaintiff began to use her copyright photos predominately Plaintiff's Copyrighted Nonconsensual Porn photo with frequent derogatory Sexual comments

14. Plaintiff is the owner of her federally registered copyrighted photographs registered with U.S The Library Congress of her Photographs and/or pertinent exclusive rights under copyright in the United States. Plaintiff is the copyright owner of an original work known as titled Tabatha Foster Music Photos. Plaintiff has complied in all respects with 17 U.S.C. § 101 et seq. and has secured exclusive rights of her photographs and has received its copyright registration with the Copyright Office in accordance with its rules and regulations. Plaintiff photographs have been unlawfully distributed over the Internet by Defendants.

15. Defendants are providing access to the Work despite having no permission to do so.

16. By providing unauthorized access to Plaintiff's photographs, Defendant is engaging in copyright infringement.

17. Upon information and belief, Defendants have infringed and is infringing the copyright in the Work by unlawfully reproducing and distributing identical copies of the Work, in violation of the United States Copyright Act, 17 U.S.C. §§ 106 et seq.

18. Defendant's infringements were and are willful, in bad faith, and executed with full knowledge of Plaintiff's copyright, and in conscious disregard for Plaintiff's exclusive rights in the protected Work.

19. Defendant's deliberate infringement of Plaintiff's copyright has greatly and irreparably

damaged Plaintiff, and Defendant will continue to damage Plaintiff greatly and irreparably unless enjoined by this Court. In the absence of injunctive relief, Plaintiff will have no adequate remedy at law. Accordingly, Plaintiff is entitled to a temporary and permanent injunction in accordance with 17 U.S.C. § 502.

20. Defendant, DAILY NEWS, on information and belief place of business is New York, NY Defendant, Daily News, is the owner of YouTube Channel titled “New York Daily News” and the owner of online website “Daily News”

21. Each Defendant is known to Plaintiff only by information obtained from Daily News Official Website and YouTube Channel. Plaintiff believes that information obtained in discovery will lead to the identification of each Defendant’s true name and will Permit Plaintiff to amend this complaint to state the name. Plaintiff further believes that additional information obtained will lead to the identification of additional infringing parties, as monitoring of online infringement of Plaintiff’s photographs are ongoing.

22. Plaintiff believes that Defendants are legally responsible for the events and happenings hereinafter alleged and legally caused injury and damages predominately thereby to Plaintiff as alleged herein. Plaintiff will seek leave to amend Complaint when the true names and other pertinent information of Defendants are ascertained

### **GENERAL ALLEGATIONS**

23. Plaintiff has never given anyone permission or authority to her photographs. In particular, Plaintiff has never published a nude photograph of herself publicly at no point in time and never gave anyone permission or consent to publish a nude photo of her publicly. Plaintiff Copyright intimate photo was shared without her consent and is Revenge Porn.

24. On or about May 6 of 2016, Plaintiff became aware that Daily News published a Revenge

Porn Nude Photograph of her buttocks without her permission or consent in one article.

Defendant has continued to distribute Plaintiff nude photo for 6 years straight until present date.

25. On or about March of 2022, Plaintiff became aware that an excessive amount of her copyright photographs including the Revenge Porn Nude photograph of her buttocks was published on multiple other Daily News websites and YouTube Channels without her permission or consent.

26. Defendants, Daily News, John Annese, Thomas Tracy and Leonard Greene are listed on Daily News Website titled “Brooklyn NYPD chief accused of sleeping with subordinates, including married pregnant women: source denies claims dated May 6, 2016 to current date with an article that displays and is distributing Plaintiff nude copyright photo of her buttocks without her permission or consent. This is Revenge porn. Daily News URL address is listed as

[HTTPS://WWW.NYDAILYNEWS.COM/NEW-YORK/BROOKLYN/NYPD-CHIEF-INVESTIGATED-SLEEPING-SUBORDINATES-ARTICLE-1.2626860](https://www.nydailynews.com/new-york/brooklyn/nypd-chief-investigated-sleeping-subordinates-article-1.2626860)

27. Defendants, Daily News, Thomas Tracy and Larry McShane are listed on Daily News Website titles “Former NYPD cop who accused her boss of bedding her and other married pregnant women refuses to cooperate with probe” dated May 7, 2016 to current date with an article that displays and is distributing Plaintiff copyright photo of her without her permission or consent. Daily News URL address is listed as [https://www.nydailynews.com/new-york/ex-nypd-mum-accused-boss-bedding-article-1.2627849?utm\\_content=buffer792b3&utm\\_medium=social&utm\\_source=facebook.com&utm\\_campaign=buffer&fbclid=IwAR0BGTJshEFqljdjS0kfm\\_L9fphlrRvmZ-d\\_TCw91xEgmtLzSTCh6j7TeKY](https://www.nydailynews.com/new-york/ex-nypd-mum-accused-boss-bedding-article-1.2627849?utm_content=buffer792b3&utm_medium=social&utm_source=facebook.com&utm_campaign=buffer&fbclid=IwAR0BGTJshEFqljdjS0kfm_L9fphlrRvmZ-d_TCw91xEgmtLzSTCh6j7TeKY)

28. Defendants, Daily News, JOHN MARZULLI and Larry McShane are listed on Daily News Website titled “ Retired NYPD cop sues for \$100M , claims police chief beat her after they had 7 years of trysts” dated May 26, 2016 to current date with an article that displays and is distributing Plaintiff nude copyright photo of her buttocks without her permission or consent. This is Revenge porn. Daily News URL address is listed as

[HTTPS://WWW.NYDAILYNEWS.COM/NEW-YORK/NYPD-CLAIMS-BOSS-BEAT-TRYSTS-FILES-100M-LAWSUIT-ARTICLE-1.2650331](https://WWW.NYDAILYNEWS.COM/NEW-YORK/NYPD-CLAIMS-BOSS-BEAT-TRYSTS-FILES-100M-LAWSUIT-ARTICLE-1.2650331)

29. On Saturday May 6, 2016 to current date, Defendant, Daily News, uploaded a YouTube video titled “Brooklyn NYPD Chief Accused of Sleeping with Subordinates” with URL address <https://youtu.be/j3cZjsnQKzE> that contained a copyright photo of Plaintiff on the thumbnail and several photographs including the revenge porn of photograph within the video of Plaintiff that Plaintiff is the copyright holder for which is registered with the Library of Congress. The photos are time stamped 0:17/ 1:14, 0:25/1:14, 0:29/ 1:14, 0:44-0:49/1:14 (Nude), 0:52/1:14, 0:54/ 1:14

30. On Saturday May 26, 2016 to current date Defendant, Daily News, uploaded a YouTube video titled “Retired NYPD cop sues for \$100M, claims police chief. Beat her after they. Had 7 years of trysts” with URL address [HTTPS://YOUTU.BE/QDEJRND8344](https://YOUTU.BE/QDEJRND8344) that contained a nude revenge porn photograph and several other photographs of Plaintiff that Plaintiff is the copyright holder for which is registered with the Library of Congress. The photos are time stamped 0:33-0:39/ 1:22 (Nude), 0:40-0:44/ 1:22, 0:45-0:49/1:22 (Nude), 0:55/ 1:23,1:07/ 1:23

31. Plaintiff was in an intimate relationship with an individual, Jeffrey Maddrey, who testified in a separate court action to contact with the Daily News but denied distributing Plaintiff Nude photo to the Daily News. Plaintiff only sent the nude photo privately to Jeffrey Maddrey.

Plaintiff never gave anyone consent to publish or share her copyright nude photo at no point in time. Plaintiff has never distributed and publicly displayed her copyright image of her buttocks at no point in time.

32. Defendants never publicly listed Jeffrey Maddrey as a source at no point in time or and did recklessly and maliciously publish Plaintiff Nude Photo and other copyright images of Plaintiff without her permission or consent while depicting Plaintiff as a liar shortly after Plaintiff relationship with Jeffrey Maddrey ended badly. Plaintiff believes her nude photo of her buttocks was distributed as revenge and to defame, shame and humiliate Plaintiff on behalf of their source, Jeffrey Maddrey. Defendants used Plaintiff copyright images including a Revenge Porn nude image of Plaintiff to sexually exploit Plaintiff for profit.

33. Defendants and Daily News has earned money and is still earning money to current date primarily using a copyright nude photo of Plaintiff's buttocks along. With her other copyright Images without her permission or consent. Daily News advertises access to subscription membership to News Articles for unlimited digital access from \$1.99 to \$3.99 a week and sales from Newspapers. Therefore, Daily News is earning money for Plaintiff's copyright photos without her permission or authority. Daily News has repeatedly displayed Plaintiff's nude photo on numerous online sites without Plaintiff permission or consent. Plaintiff has strong reason to believe Defendants, wants to reproduce and distribute a Copyright nonconsensual porn photograph along with Plaintiff other copyright images. of Plaintiff for financial gain, to increase views and build traffic to the Daily News monetized websites and YouTube channels by degrading Plaintiff in a vulgar manner. Plaintiff has never consented to be a porn model for the Daily News, its reporters at no point in time. Plaintiff copyright photos including her nude copyright photo are being used without her permission or consent.

34. Plaintiff does not believe Defendants need to display a copyright nude photo of Plaintiff or use an excessive amount of her copyright photos to report news especially in a defamatory manner. Plaintiff does not believe, the public benefits from the sexual exploitation of a Revenge Porn victim.

**FIRST CLAIM FOR RELIEF**

**(COPYRIGHT INFRINGEMENT AGAINST ALL DEFENDANTS)**

35. Plaintiff repeats and re-alleges the averments contained in paragraphs 1-34 at though fully set forth herein. Plaintiff owns valid copyrights in the Work at issue in this case.

36. Plaintiff registered her photographs with the Register of Copyrights pursuant to 17 U.S.C. § 411(a).

37. Plaintiff is currently and at all relevant times has been the sole proprietor of all rights, title and interest in and to the copyrights of the Work.

38. At no time has Plaintiff authorized Defendants to reproduce, distribute, prepare derivative works, or publicly display the Work or any portion thereof.

39. Defendants are willfully infringing Plaintiff's copyright in the Work by reproducing, displaying, distributing, and creating derivative works of the Work without permission in violation of the Copyright Act, 17 U.S.C. § 106.

40. The infringement was willful, executed with full knowledge of Plaintiff's copyright, and in conscious disregard of Plaintiff's exclusive rights in its protected Work. Defendants were all aware that they were not the owner of Plaintiff 's Copyright photographs.

41. By reason of the infringement, Plaintiff has sustained and will continue to sustain substantial injury, loss, and damage to its ownership rights in the copyrighted Work.

42. The above-described conduct by Defendants constitutes willful copyright infringement under the Copyrights Act

43. As a result of the above-described conduct by Defendants, Plaintiff has been suffered severe damages in an amount to be proven at trial. Defendants actions has caused Plaintiff pain and suffering.

44. By reason of the copyright infringement described above Plaintiff is entitled to recover Defendants profits to the extent the same are not included as part of Plaintiff's damages.

45. In the alternative, at the election of Plaintiff, Plaintiff is entitled to recover the Defendant's statutory damages up to \$150,000.00 per copyright infringed by Defendants willful copyright infringement, plus any court and attorney's fees.

Plaintiff is informed and believes, and on that basis alleges, that unless enjoined by this Court, Defendants will continue its course of conduct and will continue to wrongfully use, infringe upon, sell, and otherwise profit from Plaintiff's copyrighted photographs.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff respectfully requests that the Court enter judgment in its favor and against Defendants as follows:

1. For an order enjoining Defendants, their officers, agents, employees and those acting in concert or conspiracy with them, temporarily during the pendency of this action and permanently thereafter from:

(a) Infringing, or contributing to or participating in the infringement by others the copyright of Plaintiff's photographs of herself or acting in concert with, aiding and abetting others to infringe and copyright in any way.

- (b) Copying, duplicating, selling, licensing, displaying, distributing or otherwise using without authorization copies of Plaintiff's photographs of herself to which Plaintiff is the owner of exclusive rights under respective copyrights
2. The Defendants be required to account for and pay over Plaintiff the actual damages suffered by Plaintiff as a result of the infringement and any profits of the Defendants attributable to the infringement of Plaintiff's copyright or exclusive rights under copyright and to pay such damages to Plaintiff as to this Court shall appear just and proper within the provisions of the Copyright Act, or in the alternative, a Plaintiff, statutory damages for infringement of each separate copyright set forth in 17 U.S.C. § 504
3. or an award of costs under 17 U.S.C. § 505 or an otherwise provided by law
4. For an award of attorney fees pursuant to 17 U.S.C. § 505
5. For an award of pre-judgement interest and post judgement interest in the maximum amount permitted by law
6. Request for an order of injunction barring litigants from discussing trial related material outside of courtroom.
7. For such other and further relief as the Court deems just. And proper

Respectfully submitted.

By: Tabatha Foster, Pro Se

**Certification and Closing**

Under Federal Rule of Civil Procedure 11, by signing below, I certify to the best of my knowledge, information, and belief that this complaint: (1) is not being presented for an improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation; (2) is supported by existing law or by a non-frivolous argument for

extending, modifying, or reversing existing law; (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the complaint otherwise complies with the requirements of Rule 11.

**A. For Parties Without an Attorney**

I agree to provide the Clerk's Office with any changes to my address where case-related papers may be served. I understand that my failure to keep a current address on file with the Clerk's Office may result in the dismissal of my case.

Date of signing: 5/12, 2022

Signature of Plaintiff



Printed Name of Plaintiff: Tabatha Foster

Sworn to before me this

12<sup>th</sup> day of May, 2022



Tabatha Foster, Pro SE

Notary Public for New York

JOAN D GRIFFIN  
Notary Public State Of New York

No. 01GR4929343

Qualified In Kings County

My Commission expires 20 Commission Expires May 2, 20 26

